

1 HONORABLE JOHN C. COUGHENOUR  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

11 **T-SCAN CORPORATION**, a Washington  
12 Corporation,

13 Plaintiffs,

14 vs.

15 **ALFRESCO SOFTWARE AMERICAS,  
16 INC.**, a Delaware Corporation,

17 Defendant.

Case No.: 2:11-cv-00255 JCC

FIRST AMENDED COMPLAINT

JURY DEMAND

18 Plaintiff T-Scan Corporation, a Washington corporation (“T-Scan” or “Plaintiff”)  
19 brings this action for Fraud in the Inducement of a Contract, Breach of Contract, and  
20 Intentional Interference With Business Relationships against Defendant Alfresco Software  
21 Americas, Inc., a Delaware corporation (“Alfresco” or “Defendant”), and alleges as  
22 follows:

23 **I. THE PARTIES**

24 1. Plaintiff T-Scan Corporation is a Washington corporation with its principal  
25 place of business in Seattle, Washington.

2. Defendant Alfresco Software Americas, Inc. is a Delaware corporation with its principal place of business in Palo Alto, California.

## II. JURISDICTION AND VENUE

3. This Court has personal jurisdiction over the Defendant within the Western District of Washington because Alfresco is a Delaware corporation with its principal place of business in Palo Alto, California, and Plaintiff is a Washington corporation with its principal place of business in Seattle, Washington. 28 U.S.C. § 1332(a)(1).

4. This Court has diversity jurisdiction over T-Scan's claims because the parties are citizens of different states and the claims herein exceed \$75,000, exclusive of attorneys' fees and costs. 28 U.S.C. § 1332.

5. This Court has supplemental jurisdiction over any state claims pursuant to 28 U.S.C. § 1337.

6. Venue is proper in this district because all or a substantial part of the events or omissions giving rise to the claims occurred within this district. 28 U.S.C. § 1391(a)(2).

### III. FACTUAL BACKGROUND

7. Plaintiff T-Scan is a business that provides litigation support services and medical, legal and insurance records storage and retrieval.

8. T-Scan invests significant time, effort and money in enhancing its offerings in order to stay ahead of its competition in this very competitive business.

9. In early 2008, T-Scan determined that if it created a Web-based interface to its records storage database, the enhanced service would allow its existing customers to have ready access to their records stored on T-Scan's computers, and would allow T-Scan to attract new customers to subscribe to T-Scan's offerings.

10. T-Scan learned of Alfresco's open-source records storage and retrieval software ("Content Manager") and contacted Alfresco for the purpose of licensing the Alfresco Content Manager software.

1       11. After speaking with the Alfresco representative, T-Scan learned that the  
 2 Content Manager would not serve all of T-Scan's needs, but being open-source software, it  
 3 could easily be modified to serve T-Scan's needs.

4       12. Alfresco has created a "Partner Network Program" ("PNP") wherein it  
 5 collaborates with other businesses who provide value-added services to further expand  
 6 Alfresco's customer base.

7       13. The PNP is designed to provide partner organizations with the expertise to  
 8 market, configure, customize and implement Alfresco solutions for customers worldwide.

9       14. Alfresco works with different categories of partners including those it  
 10 categorizes as "System Integrators."

11       15. According to Alfresco's Web site, "System Integrators provide expertise  
 12 consulting, integration and migration services for Alfresco content management solutions.  
 13 All System Integrators have trained and certified Alfresco consultants on staff."

14       16. Alfresco informed T-Scan that BPA is a member of Alfresco's Partner  
 15 Network Program and referred T-Scan to BPA.

16       17. Based in large part on Alfresco's touting BPA's alleged ability to satisfy  
 17 T-Scan's needs, T-Scan contracted with BPA to acquire the software solution they needed  
 18 to provide the new offerings it wished to make.

19       18. Beginning on or about May 14, 2008 and for some time thereafter, BPA  
 20 presented numerous iterations of a proposal to T-Scan for a software solution for T-Scan's  
 21 needs.

22       19. T-Scan and BPA entered into an agreement whereby BPA promised to  
 23 create and deliver software specific to T-Scan's needs on a particular schedule, and T-Scan  
 24 promised to pay an amount stated in the written agreement for the creation of the software.

25       20. In order to start the process, on June 6, 2008, BPA sought and received a  
 26 \$10,000 "mobilization advance" from T-Scan.

1       21.    In reliance on Alfresco's representations that Alfresco, in combination with  
 2 BPA, could satisfy T-Scan's needs, and BPA's representations that the project would be  
 3 completed in less than two (2) months, T-Scan paid the first of the license fees to Alfresco  
 4 that would allow them to use the Alfresco software in a two-computer "production"  
 5 environment.<sup>1</sup> The annual fee for such use was \$30,000.

6       22.    In order to get a good understanding of T-Scan's operation and needs, BPA  
 7 sent one of its engineers to the T-Scan offices for two (2) weeks to gain that understanding.

8       23.    The entire cost of the engineer being onsite at the T-Scan offices was borne  
 9 by T-Scan, including, but not limited to, airfare, lodging and productivity time taken from  
 10 T-Scan employees in order to provide the engineer with the knowledge he sought. The two  
 11 (2) week visit cost T-Scan \$18,249.06, \$14,400.00 of which was attributed to "software  
 12 development."

13       24.    Apparently, software development was initiated, and on September 3, 2008,  
 14 BPA invoiced T-Scan for, and was paid, an additional \$20,400.

15       25.    T-Scan had begun to, and continued to create detailed specifications of its  
 16 needs to "flesh out" for BPA detailed specifications of the project in order to answer the  
 17 many questions BPA posed. In effect, T-Scan was being required to do BPA's job for  
 18 them because BPA seemed unable to grasp even such simple concepts as, among other  
 19 things, providing a method for sales tax calculation in the invoicing module of the  
 20 software.

21       26.    Sometime in late September 2008, BPA approached T-Scan and stated that  
 22 the many of features that had been proposed to be implemented using the Alfresco software  
 23 could not, in fact, be implemented in Alfresco. However, BPA stated, those features *could*

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 25       <sup>1</sup> A "production" environment is an environment where productive work occurs that supports the licensee's  
 26 business. The converse is a "development" environment that is used primarily to create and/or test software  
 prior to putting the software into "production."

1 be implemented using another software platform (“Liferay”) that T-Scan was already  
 2 using.

3       27.     Relying on BPA’s purported experience and expertise, coupled with  
 4 Alfresco’s representations to T-Scan that BPA had at least one (1) certified and trained  
 5 Alfresco consultant on staff, T-Scan agreed to utilize that software platform.

6       28.     In early October of 2008, and well over a month past the due date for  
 7 completion of the project, BPA produced yet *another* iteration of the proposal entitled, “A  
 8 Proposal to T-Scan for Alfresco Implementation.”

9       29.     This iteration (“2008-10”) specifically excludes some significant  
 10 components of T-Scan’s needs, but the time-to-finish had been extended to 22 weeks  
 11 (almost 3 times the original estimate), and the cost estimate rose drastically to \$110,000.

12       30.     Approximately one month later, BPA presented an updated proposal  
 13 (“2008-11”) now titled “A Proposal to T-Scan for Alfresco Liferay Portal Implementation.”

14       31.     The 2008-11 had apparently split the user interface off as a separate item.  
 15 Now, to implement the portion of the original version of the proposal that BPA stated it  
 16 could not implement using the Alfresco software, BPA provided a time-to-finish of 15  
 17 weeks.

18       32.     Assuming that progress was being made in the development effort, but  
 19 growing concerned the estimated seven week project had now stretched to six months,  
 20 T-Scan received another invoice from BPA in January 2009 for an additional amount of  
 21 \$25,000 for work that, T-Scan believed at the time, had been completed. T-Scan paid that  
 22 amount, and concurrently renewed its annual license fee for the Alfresco software for  
 23 another \$30,000.

24       33.     On or about December 22, 2008, BPA produced an expanded version of the  
 25 “Proposal to T-Scan for Alfresco Liferay Portal Implementation” incorporating much of the  
 26 design work performed by T-Scan personnel (“2008-12-1”).

1       34.     Although T-Scan had, at this time, already paid BPA \$44,800 as was  
 2 invoiced by BPA, BPA acknowledged only the initial \$10,000 “mobilization fee” and  
 3 claimed that T-Scan had outstanding invoices in the amount of \$25,031.

4       35.     BPA now estimated that the project was now going to take 30 weeks time-  
 5 to-finish and cost T-Scan \$133,031.

6       36.     One week later, on December 30, 2008, BPA presented a slightly revised  
 7 version of its “Proposal to T-Scan for Alfresco Liferay Portal Implementation”  
 8 (2008-12-2”).

9       37.     BPA had raised its estimate to 31 weeks to completion and the project that  
 10 was initially quoted as a seven week, \$39,000 project was now quoted at a cost of  
 11 \$136,631.

12       38.     Having yet to receive even a single component functional part of the overall  
 13 product, T-Scan indicated to BPA that T-Scan required some indicia of value received for  
 14 its investment to-date prior to remitting any further payment.

15       39.     For the next ten months or so, BPA uploaded various versions of the  
 16 software in development, whereupon, T-Scan employees would quickly determine that the  
 17 software was not functioning in the manner specified. BPA was, in effect, requiring  
 18 T-Scan to incur significant additional costs of in-house computer staff to “test” BPA’s  
 19 software.

20       40.     On December 9, 2009, not having received any functioning software  
 21 whatsoever from BPA, T-Scan took the steps necessary to prohibit further access by BPA  
 22 personnel to T-Scan’s computers.

23       41.     After T-Scan cut off computer access to BPA, T-Scan hired another  
 24 programming consultant who is knowledgeable about the Alfresco software.

25       42.     After reviewing BPA’s work, that engineer informed T-Scan that the  
 26 software provided by BPA was unusable.

1       43. The engineer further indicated that, contrary to its representations to T-Scan,  
 2 BPA had not made any custom modifications to the Alfresco software, and that the  
 3 Alfresco software was in a state that was “right out of the box.”

4       44. After gaining an understanding of T-Scan’s needs, the engineer stated  
 5 clearly that the portions of the software application T-Scan sought, and claimed by BPA to  
 6 not be able to be done in Alfresco, actually could have been done in Alfresco.

7       45. As of December 9, 2009, T-Scan has paid BPA more than \$73,649.

8       46. As of December 9, 2008, T-Scan has paid Alfresco at least \$60,000.

9       47. On February 24, 2010, by and through the law offices of The Chugh Firm,  
 10 BPA sent T-Scan a demand for \$101,631 for alleged services rendered that remain unpaid.  
 11 In the demand letter, BPA generally alleges that these fees are a result of “changes in  
 12 scope” of the original project.

13       48. To date, BPA has not delivered a single useable piece of software to T-Scan.

14       49. After terminating its business relationship with BPA for its breaches and  
 15 other torts, T-Scan engaged the consulting firm of Reva Solutions (“Reva”), a company  
 16 that has an office located in Seattle.

17       50. Reva is a member of Alfresco’s PNP program.

18       51. Defendant Alfresco knew of T-Scan’s contractual relationship and business  
 19 expectancy with Reva.

20       52. T-Scan, in its demands to Alfresco, and having already paid Alfresco in an  
 21 amount of at least \$60,000, did not renew its license for the Alfresco software for the  
 22 reason that T-Scan had already paid Alfresco \$60,000 for two (2) years licensing, from  
 23 which T-Scan received no benefit. Rather, T-Scan demanded that Alfresco provide an  
 24 additional license period of two (2) years for future use of the software.

25       53. According to the terms of the licenses already paid for by T-Scan, T-Scan is  
 26 allowed to use the versions of the Alfresco software that it has already received without

2        54. When T-Scan refused to pay Alfresco the additional licensing fees, Alfresco  
3 informed Reva that Reva could not support T-Scan unless T-Scan paid additional license  
4 fees to Alfresco, and that support by Reva would be a breach of Alfresco's and Reva's  
5 contractual relationship.

6           55.     By this time, T-Scan had already paid Reva approximately \$6,000 to begin  
7 work on the project.

8        56. By informing Reva that Reva could not support T-Scan, Alfresco intended  
9 to interfere and did interfere with the business relationship between T-Scan and Reva.

10        57.      As a result of Alfresco's threats to Reva, Reva informed T-Scan that it could  
11 no longer support T-Scan and could not develop the software that T-Scan requires for its  
12 business operations.

13        58.     As a result of the loss of Reva's support, T-Scan is unable to complete the  
14 software development it requires, and is being damaged by its inability to grow its business  
15 as anticipated and to provide T-Scan customers with access to their records via a  
16 Web-based facility.

17 59. As a result of Alfresco's prohibiting of its PNP members, T-Scan is unable  
18 to mitigate the damages it has suffered by Alfresco's and BPA's actions and inactions.

#### **IV. CLAIMS FOR RELIEF**

## CLAIM I

## **FRAUD IN THE INDUCEMENT OF THE CONTRACT**

22 60. Plaintiff hereby repeats and realleges paragraphs 1 – 59 as though fully set  
23 forth herein.

24        61.     As stated, *supra*, Alfresco requires that “[a]ll System Integrators have  
25     trained and certified Alfresco consultants on staff.”

1       62.    When negotiating with T-Scan for the project, BPA knew that Alfresco  
2 imposes this requirement on all members of its Partner Network Program.

3       63.    When negotiating with T-Scan, BPA knew that it did not have a trained and  
4 certified Alfresco consultant on staff.

5       64.    By holding itself out to T-Scan as an Alfresco Partner, BPA represented to  
6 T-Scan that it had a trained and certified Alfresco consultant on its staff.

7       65.    By referring T-Scan to BPA, Alfresco represented to T-Scan that BPA had a  
8 trained and certified Alfresco consultant on its staff.

9       66.    BPA knew that it did not have a trained and certified Alfresco consultant on  
10 its staff and thereby knew that it was misrepresenting to T-Scan that it did have a trained  
11 and certified Alfresco consultant on its staff.

12       67.    While holding out BPA as an Alfresco partner, Alfresco knew that its PNP  
13 program required that BPA have a certified and trained Alfresco consultant on its staff and  
14 further knew, or should have known, that BPA did not have a certified and trained Alfresco  
15 consultant on its staff.

16       68.    By holding out BPA as an Alfresco Partner, Alfresco intended for T-Scan to  
17 believe that BPA had a trained and certified Alfresco consultant on its staff in order to  
18 entice T-Scan into a contractual relationship with Alfresco and to license Alfresco's  
19 software.

20       69.    By holding out BPA to be an Alfresco Partner, Alfresco deceived T-Scan  
21 into believing that BPA had an Alfresco trained and certified consultant on its staff and  
22 T-Scan justifiably relied to its detriment on Alfresco's misrepresentations when it agreed to  
23 enter into the contractual relationships with Alfresco and BPA.

24       70.    As a result of BPA's misrepresentations and failures to perform, along with  
25 Alfresco's misrepresentations to T-Scan, T-Scan has been injured in an amount to be  
26 proved at trial, but in excess of \$75,000.

## CLAIM II

## **BREACH OF CONTRACT**

71. Plaintiff hereby repeats and realleges paragraphs 1 – 70 as though fully set forth herein.

72. When T-Scan entered into the contract with Alfresco to license Alfresco's software, T-Scan reasonably relied on Alfresco's implied covenants of good faith and fair dealing.

73. By Alfresco holding out BPA as a member of and, implicitly, a member in good standing Alfresco held out BPA as having a trained and certified Alfresco engineer on its staff.

74. Alfresco nevertheless, requested and was paid at least \$60,000 by T-Scan for licensing Alfresco's software. Consequently, Alfresco has breached its commitments of good faith and fair dealing to T-Scan under the software licensing contract.

75. As a result of that breach, T-Scan has been injured in an amount to be proved at trial.

### CLAIM III

## INTERFERENCE WITH BUSINESS RELATIONSHIPS

76. Plaintiff hereby repeats and realleges paragraphs 1 – 75 as though fully set forth herein.

77. T-Scan had a valid business relationship and business expectancy with Reva.

78. Alfresco knew of the business relationship and expectancy existing between Plaintiff T-Scan and Reva and provided T-Scan with documents showing Alfresco's knowledge of that business relationship and expectancy

79. When T-Scan refused to pay additional license fees, Alfresco intended to interfere and did interfere with the business relationship and expectancy existing between

T-Scan and Reva by informing Reva that Reva could not support T-Scan or provide new services to them.

80. Due to Alfresco's interference with the business relationship and expectancy between T-Scan and Reva, T-Scan's development of the software solution it requires has been thwarted by Alfresco.

81. Alfresco's interference has damaged and continues to damage T-Scan in an amount to be proved at trial.

## VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment as follows:

10       1.     That the Court finds that documents and conduct of the parties prove that  
11 contracts exist among the parties;

12        2.      That the Court find that BPA breached its contract with T-Scan when it  
13 failed to create and deliver software that functioned;

14           3.     That the Court find that BPA breached its contract with T-Scan when it  
15 failed to produce software on the time schedule agreed:

16 4. That the Court find that Alfresco made a representation of material fact  
17 when they told T-Scan that BPA was a qualified member of the Alfresco Partner Network  
18 Program when, in fact, BPA did not have a trained and certified Alfresco person on its  
19 staff;

20 | 5. That the Court find that the representation was false;

21       6.      That knowing that BPA was not a member in good standing of the PNP, and  
22 by nevertheless demanding and receiving at least \$60,000 from T-Scan in licensing fees,  
23 Alfresco breached its implied covenants of good faith and fair dealing in its licensing  
24 contract with T-Scan;

25           7.       That the Court finds that Alfresco intended for T-Scan to rely on their false  
26 representations;

1       8.    That the Court find that T-Scan justifiably did rely on the Alfresco's false  
2 representations when it agreed to enter into the contractual relationships with it and BPA;

3       9.    That the Court find that T-Scan was injured thereby;

4       10.   That the Court find that the Defendant breached its covenants of good faith  
5 and fair dealing with T-Scan;

6       11.   That the Court order the contract between the parties affecting T-Scan be  
7 rescinded;

8       12.   That the Court order the Defendant to remit to T-Scan those amounts that it  
9 has received from T-Scan and that BPA has received from T-Scan in T-Scan's reliance on  
10 Alfresco's misrepresentations in an amount to be proved at trial;

11       13.   That the Court order the Defendant to remit to T-Scan its losses suffered as  
12 a result of the hours of manpower required of T-Scan to train the BPA personnel details  
13 about T-Scan's business in an amount to be proved at trial;

14       14.   That the Court order the Defendant to remit to T-Scan its losses suffered as  
15 a result of the hours of manpower required of T-Scan to test the BPA software in an  
16 amount to be proved at trial;

17       15.   That the Court find that a business relationship and expectancy existed  
18 between T-Scan and Reva;

19       16.   That the Court find that Alfresco intended to interfere with and did interfere  
20 with the business relationship and expectancy between T-Scan and Reva;

21       17.   That the Court find that Alfresco's intentional interference with the business  
22 relationship and expectancy between T-Scan and Reva damaged T-Scan;

23       18.   That by this interference, Alfresco damaged T-Scan and continues to  
24 damage T-Scan by thwarting T-Scan's attempts to develop the software solution for  
25 T-Scan's business and its attempts to mitigate the damages it has suffered and is suffering;

19. That the Court order Alfresco to pay T-Scan the amount of damages it has suffered by not being able to provide the Web-based services to its customers;

3           20. That the Court order Alfresco to pay T-Scan the losses it has suffered by not  
4 being able to mitigate its damages;

5       21. That the Court order Alfresco to pay T-Scan the amount equal to that paid  
5 by T-Scan to Reva;

7           22. That the Court order Defendant to pay to T-Scan both the costs of this suit  
8 and the reasonable attorneys' fees incurred by T-Scan in investigating and prosecuting this  
9 action.

10           23. That the Court grant to T-Scan such other and additional relief as is just and  
11 proper.

## VI. JURY DEMAND

Plaintiff respectfully demands a jury trial.

Dated this 16<sup>th</sup> day of February 2011.

Respectfully submitted,

## CARPELAW PLLC

s/ Robert S. Apgood

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